

On February 22, 2006 appellant, then a 44-year-old flat sorter machine operator, filed a Form CA-2, occupational disease claim, alleging that a popliteal cyst on her left knee was caused

by employment factors. In an attached statement, she described her work history and noted that over the years her legs ached with standing. In August 2003, appellant had vein surgery on both legs and, from May to June 2004, began to experience severe pain and stiffness in her knees. She stated that in September 2004 a popliteal cyst was found on x-ray of her left leg. In July 2005, Dr. Jeffrey D. Wade, Board-certified in orthopedic surgery, performed knee surgery but by September 2005 the popliteal cyst returned. Appellant submitted medical reports including a magnetic resonance imaging (MRI) scan of the left knee dated October 13, 2004 that demonstrated a prominent popliteal fossa cyst. An operative report dated July 25, 2005 noted that Dr. Wade performed arthroscopic surgery of the left knee including extravasations of fluid from the cyst, debridement of medial plica and abrasive chondroplasty of the medial femoral compartment. Dr. Wade provided work restrictions. In a September 15, 2005 report, he advised that appellant's "current condition may have been aggravated by her job."

On March 3, 2006 the employing establishment controverted the claim, noting that since August 2004 appellant had been working limited duty that was mainly seated.

In a letter dated March 10, 2006, the Office informed appellant of the evidence needed to support her claim. Appellant submitted reports from Dr. Wade dated October 12, 2004 to April 18, 2006. Dr. Wade diagnosed internal derangement and popliteal cyst, provided work restrictions and recommended against additional surgery. In a January 25, 2005 report, Dr. Anne Marie Oberheu, a Board-certified physiatrist, noted that appellant was seen for low back pain and diagnosed exacerbation of sacroiliac joint dysfunction, lumbar back pain, myofascial pain syndrome, left shoulder injection with impingement and cervical spine myofascial pain. In a May 16, 2006 report, Dr. Michael Scott Kendrick, a Board-certified anesthesiologist, noted that appellant was seen for a medication compliance screen. He diagnosed bilateral sacroiliac joint dysfunction, bilateral carpal tunnel syndrome and cervicalgia.

By decision dated June 12, 2006, the Office denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship.

On July 22, 2006 appellant requested a hearing. She submitted a July 10, 2006 report from Dr. Wade. On August 30, 2006 the Office denied appellant's request for a hearing on the grounds that it was untimely filed. The Office further denied the request on the grounds that the issue in the case could be fully addressed by requesting reconsideration with the Office.

On November 13, 2006 appellant requested reconsideration. By decision dated December 7, 2006, the Office denied her reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

¹ 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

Office regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”³ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish that her left knee popliteal cyst was caused by her employment factors. The reports of Dr. Oberheu and Dr. Kendrick do not address her left knee condition and are therefore not relevant to this claim. Dr. Wade, who performed knee surgery on July 25, 2005, provided a September 12, 2005 report in which he advised that appellant’s current condition may have been aggravated by her job. Medical opinions that are speculative or equivocal in character have little probative value.⁸ The

² Gary J. Watling, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee).

⁴ Solomon Polen, 51 ECAB 341 (2000).

⁵ See Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁶ *Id.*

⁷ Dennis M. Mascarenas, 49 ECAB 215 (1997).

⁸ Kathy A. Kelley, 55 ECAB 206 (2004).

opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁹ Dr. Wade did not identify what appellant's "current condition" was and couched his opinion in speculative language. This report is therefore insufficient to meet appellant's burden of proof. The medical evidence therefore does not establish that appellant's popliteal cyst was employment related.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹⁰ The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹¹ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹²

ANALYSIS -- ISSUE 2

The Office denied appellant's request for a hearing on the grounds that it was untimely filed. In an August 30, 2006 decision, the Office found that appellant was not, as a matter of right, entitled to a hearing as her request, dated July 22, 2006, had not been made within 30 days of the June 12, 2006 decision. As appellant's request was dated July 22, 2006, more than 30 days after the date of the June 12, 2006 decision, the Office properly determined that she was not entitled to a review of the written record as a matter of right as her request was untimely filed.¹³

The Office also has the discretionary power to grant a request for a written record review when a claimant is not entitled to such as a matter of right. In the August 30, 2006 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, as the only

⁹ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁰ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹¹ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹² *Claudio Vazquez*, *supra* note 10.

¹³ *Id.*

limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁴ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion. The Office therefore properly denied her request.

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.¹⁵ Section 10.606(b)(2) of the Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹⁶ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁷ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁸ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹

ANALYSIS -- ISSUE 3

With her reconsideration request, appellant merely checked that she was requesting reconsideration and argued that the medical evidence submitted was sufficient to establish entitlement. She therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).²⁰

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no relevant medical evidence. The merit issue in this case is whether she established that her left knee popliteal cyst was employment related. This requires the submission of

¹⁴ See *Mary Poller*, 55 ECAB 483 (2004).

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ 20 C.F.R. § 10.608(b).

¹⁸ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

¹⁹ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

²⁰ 20 C.F.R. § 10.606(b)(2).

medical evidence establishing that the claimed condition is causally related to the employment factors identified by the claimant.²¹ With her reconsideration request, appellant submitted a July 10, 2006 report in which Dr. Wade advised that prolonged standing could aggravate her popliteal cyst. It is well established that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²² The July 10, 2006 report of Dr. Wade is essentially duplicative of his prior opinion on causal relations. Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of employment. The Board further finds that the Office properly denied her request for a hearing and refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).²³

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 7, August 30 and June 12, 2006 be affirmed.

Issued: August 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²¹ *Solomon Polen*, *supra* note 4.

²² *James W. Scott*, 55 ECAB 606 (2004).

²³ The Board notes that appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to that evidence which was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c).